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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICKEY WILLIAMS,) Case No. CV 12-07150 DDP (JEMx)
)
Plaintiff,) **ORDER GRANTING DEFENDANTS' MOTION**
) **TO DISMISS**
v.) [Docket number 21]
)
KAMALA D. HARRIS, Attorney)
General; E. VALENZUELA,)
Warden; MATTHEW CATE,)
Secretary of CDCR; GEORGE)
GIURBINO, Director of CDCR;)
JERRY BROWN, State Governor,)
)
Defendants.)
)
_____)

Presently before the court is Defendants Kamala D. Harris,
Matthew Cate, George Giubino, Elvin Valenzuela, and Jerry Brown
(collectively, "Defendants")'s Motion to Dismiss under Rules
12(b)(6) and 8(a)(2). The case is suitable for adjudication without
oral argument. Having considered the parties' submissions, the
court now adopts the following order.

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1 **I. Background**

2 Plaintiff Ricky Williams is an inmate of the California
3 Department of Corrections and Rehabilitation ("CDCR"), presently
4 incarcerated at the California Men's Colony ("CMC") in San Luis
5 Obispo, California. Appearing *pro se*, on September 7, 2012,
6 Plaintiff brought the instant Complaint alleging that Defendants
7 violated his rights under the Americans with Disabilities Act and
8 the Rehabilitation Act of 1973 (collectively, the "ADA"). The
9 gravamen of Plaintiff's claim is that the California Board of
10 Parole Hearings ("BPH" or "Board")'s December 22, 2011 decision to
11 deny him parole, which was based in part on his mental health,
12 violated Title II of the ADA. Plaintiff requests that the court set
13 aside his parole denial, grant him a new parole hearing, and render
14 invalid the procedures used to deny him parole.

15 On October 21, 1991, after having pled guilty to the charge of
16 second degree murder (Cal. Penal Code § 187), Plaintiff was
17 sentenced to state prison for a term of fifteen years to life.

18 On December 22, 2011, Petitioner appeared before the Board for
19 his fifth parol consideration hearing. The Board concluded that
20 Plaintiff is not suitable for parole because he poses an
21 unreasonable risk of danger if released from prison. (See Complaint
22 Ex. J at 160-169, Transcript of BPH Proceedings.) The Board based
23 this conclusion on what it described as Plaintiff's record of
24 serious misconduct while incarcerated, including several instances
25 of misconduct since the prior parole hearing; his failure to take
26 responsibility for such conduct; his past and present mental
27 health, including a psychological report, dated July 28, 2011,
28 diagnosing him with delusional disorder (persecutory type); and his

1 failure to take full advantage of self-help programming
2 opportunities available to him in CDCR. (Id.)

3 Plaintiff has previously filed two unsuccessful habeas corpus
4 petitions challenging the December 22, 2011 denial of his parole
5 application. Plaintiff filed a state law habeas corpus petition, In
6 re Rickey Williams, Case No. BH08655, which was denied by the
7 California Supreme Court on December 19, 2012. (See Defendants'
8 Request for Judicial Notice ("RJN"), Exs. 2-4.) Plaintiff also
9 filed a federal habeas corpus petition, Ricky Williams v. Terri
10 Gonzalez, Case No. CV 13-0143, which was denied by this court on
11 April 3, 2013. (See RJN Ex. 5.)

12 13 **II. Legal Standard**

14 A complaint will survive a motion to dismiss when it contains
15 "sufficient factual matter, accepted as true, to state a claim to
16 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
17 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
18 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
19 "accept as true all allegations of material fact and must construe
20 those facts in the light most favorable to the plaintiff." Resnick
21 v. Hayes, 213 F.3d 443, 447 (9th Cir.2000). Although a complaint
22 need not include "detailed factual allegations," it must offer
23 "more than an unadorned, the-defendant-unlawfully-harmed-me
24 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
25 allegations that are no more than a statement of a legal conclusion
26 "are not entitled to the assumption of truth." Id. at 679. In other
27 words, a pleading that merely offers "labels and conclusions," a
28 "formulaic recitation of the elements," or "naked assertions" will

1 not be sufficient to state a claim upon which relief can be
2 granted. Id. at 678 (citations and internal quotation marks
3 omitted).

4 "When there are well-pleaded factual allegations, a court
5 should assume their veracity and then determine whether they
6 plausibly give rise to an entitlement of relief." Id. at 679.
7 Plaintiffs must allege "plausible grounds to infer" that their
8 claims rise "above the speculative level." Twombly, 550 U.S. at
9 555. "Determining whether a complaint states a plausible claim for
10 relief" is a "context-specific task that requires the reviewing
11 court to draw on its judicial experience and common sense." Iqbal,
12 556 U.S. at 679.

13 14 **III. Discussion**

15 Defendants argue that the Complaint should be dismissed on the
16 grounds that: (1) the Complaint should be construed as a habeas
17 corpus petition and dismissed for failure to exhaust state remedies
18 prior to filing; (2) Plaintiff filed a separate and concurrent
19 federal writ of habeas corpus, which has already been denied by
20 this court, precluding litigation of the same issues in the instant
21 action; (3) Plaintiff fails to allege facts showing actionable
22 discrimination under the ADA; and (4) Plaintiff's Complaint lacks
23 adequate specific factual allegations as to the role played by each
24 Defendant in causing the harm alleged. The court considers each
25 argument in turn.

26 As to Defendants' first argument, the court is unpersuaded by
27 Defendants' contention that the Complaint should be construed as a
28 habeas corpus petition and that dismissal is warranted for failure

1 to exhaust state remedies. "[W]hen a state prisoner is challenging
2 the very fact or duration of his physical imprisonment, and the
3 relief he seeks is a determination that he is entitled to immediate
4 release or a speedier release from that imprisonment, his sole
5 federal remedy is a writ of habeas corpus." Preiser v. Rodriguez,
6 411 U.S. 475, 500 (1973). However, "[n]ot all challenges to a
7 parole board's policy implicate the invalidity of continued
8 confinement." Bogovich v. Sandoval, 189 F.3d 999, 1004 (9th Cir.
9 1999). A challenge to a parole board's policy need not be brought
10 as a habeas corpus petition where it "does not necessarily imply
11 the invalidity of their continuing confinement." Id. at 1004.

12 In Bogovich, the Ninth Circuit held that a challenge brought
13 by state prisoners to a policy under which they were allegedly
14 denied parole primarily because of their substance abuse
15 disabilities could be brought as a claim under Title II of the ADA,
16 rather than as a habeas corpus petition. Bogovich, 189 F.3d 999,
17 1001, 1005. The Court held that the ADA claim could go forward
18 because the prisoners would not "necessarily be entitled to parole
19 or to shorter prison terms if they were successful on the merits of
20 their ADA claim." Id. at 1003. Rather, the Court held, the
21 prisoners contended only that "in the future, the Board should not
22 be allowed to discriminate against disabled inmates in its parole
23 decision-making process." Id. at 1003-04.

24 As in Bogovich, Plaintiff does not seek reversal of the
25 Board's decision to deny him parole, but rather a new parole
26 hearing conducted under a standard compatible with Title II. (Id.
27 at 48.) Because the relief sought by Plaintiff, if granted, would
28 "not necessarily imply the invalidity of [his] continuing

1 confinement," Bogovich, 189 F.3d at 1004, the court will not
2 construe the complaint as a habeas petition. Accordingly, the
3 requirements for the exhaustion of available state remedies--which
4 the government contends Plaintiff failed to satisfy--do not apply.
5 See Rose v. Lundy, 455 U.S. 509, 515 (1982) (explaining requirement
6 of exhaustion of state remedies for federal habeas petitions).
7 Thus, the court will not dismiss the complaint under the
8 government's failure-to-exhaust theory.

9 The court next considers Defendants' argument that the court
10 should decline to consider the Complaint because Plaintiff has
11 filed a separate habeas corpus petition before this court. "A court
12 may choose not to exercise its jurisdiction when another court
13 having jurisdiction over the same matter has entertained it and can
14 achieve the same result." Crawford v. Bell, 599 F.2d 890, 893 (9th
15 Cir. 1979). As Defendants note, Plaintiff previously filed, on
16 January 9, 2013, a federal habeas corpus petition styled Rickey
17 Williams v. Terri Gonzalez, which the court denied on April 3,
18 2013. (Case No. 13-0143, DKT No. 12.) The Ninth Circuit denied
19 Williams a certificate of appealability on January 1, 2014. (Id.
20 DKT No. 16.)

21 As in the current Complaint, in that Petition, Plaintiff
22 contended, among other arguments, that the BPH Commissioner's
23 reliance on Plaintiff's mental health in denying him parole was
24 unlawfully discriminatory. (See Petition at 61-66.) The government
25 argues that the court should dismiss the complaint on the ground
26 that it is duplicative relative to the Williams v. Gonzalez. (See
27 Mot. at 9-10.)

1 The court will not dismiss the ADA claim on this basis.¹ The
2 court dismissed Plaintiff's habeas corpus Petition without
3 considering whether the parole board engaged in unlawful
4 discrimination under federal anti-discrimination statutes. (See
5 RFJN Ex. 4.) As explained in that case, the scope of federal habeas
6 review in the context of a parole decision is limited to the
7 constitutional question of whether fair and adequate procedures
8 were employed for protection of the prisoner's state-created
9 liberty interest. See Swarthout v. Cooke, 131 S. Ct. 859, 863
10 (2011) ("Because the only federal right at issue is procedural, the
11 relevant inquiry is what process [the petitioner] received, not
12 whether the state court decided the case correctly.") The court
13 found that, during the December 22, 2011 proceeding, Plaintiff was
14 represented by counsel, testified at length, presented beneficial
15 evidence, and received a written statement of the reason for the
16 Board's decision. (See RJN Ex. 4.) On this basis, the court found
17 that fair and adequate procedures were provided and it denied the
18 Petition. (Id.) As the primary issues raised in the current
19 Complaint, involving the right to be free of discrimination under
20 the ADA, were not the subject of an earlier adjudication, the Court
21 does not find a sufficient interest in the conservation of judicial

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23 ¹ Plaintiff also asserts at points that there were
24 deficiencies with respect to the quality of his representation,
25 bias on the part of the Board leading up and at the December 22,
26 2011 hearing, and a failure of the Board to articulate a nexus
27 between its stated reasons for denial of parole and a current
28 unreasonable risk to public safety. (See, e.g., Compl. at 16-18,
32-34, 38.) With respect to those assertions, the court agrees with
Defendants that these claims are properly brought in the form of a
habeas corpus petition and the court chooses not to exercise
jurisdiction over these claims, having already denied a habeas
petition addressing these issues. See Ricky Williams v. Terri
Gonzalez, Case No. CV 13-0143-DDP (Apr. 3, 2013).

1 resources to merit dismissal of the case on the ground that it is
2 duplicative.

3 Next, the court considers Defendants' argument that the
4 complaint should be dismissed on the ground that Plaintiff has
5 failed to allege conduct that violates the ADA. (See Mot. at 10.)
6 On this score, the court agrees with Defendants and will dismiss
7 the Complaint.

8 Title II of the ADA prohibits discrimination by a public
9 entity on the basis of disability. 42 U.S.C. § 12132; Lovell v.
10 Chandler, 303 F.3d 1039, 1052 (9th Cir. 2004). The statute applies
11 to inmates in state prison. See Armstrong v. Wilson, 124 F.3d 1019,
12 1023, 1025 (9th Cir. 1997). To state a claim of disability
13 discrimination under Title II, a plaintiff must allege four
14 elements: "(1) the plaintiff is an individual with a disability;
15 (2) the plaintiff is otherwise qualified to participate in or
16 receive the benefit of some public entity's services, programs, or
17 activities; (3) the plaintiff was either excluded from
18 participation in or denied the benefits of the public entity's
19 services, programs, or activities, or was otherwise discriminated
20 against by the public entity; and (4) such exclusion, denial of
21 benefits, or discrimination was by reason of the plaintiff's
22 disability." Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002).

23 The Ninth Circuit has held that a plaintiff may state a claim
24 under Title II based on allegations that a parole board failed to
25 perform an individualized assessment of the threat that the
26 prisoner poses to the community by categorically excluding from
27 consideration for parole all people with a disability. See
28 Thompson, 295 F.3d at 894 n. 1. However, parole boards are not

1 barred from considering an inmate's disability as part of an
2 individualized inquiry for parole suitability, where the disability
3 is relevant to a determination of the person's propensity to commit
4 crime or the board's legitimate penological interests. Id.

5 Here, Plaintiff alleges in his Complaint that he has "state[d]
6 a claim under Title II that the parole board failed to perform an
7 individualized assessment of the threat he pose [sic] to the
8 community by categorically excluding from consideration for parole
9 all people with mental illness history." (Compl. at 36.) Under
10 Thompson, such a categorical exclusion could give rise to an ADA
11 claim.

12 However, as Defendants point out, Plaintiff's Complaint
13 contradicts his contention that he was excluded solely because of
14 his mental health disability. (See Mot. at 12.) In considering a
15 complaint, the court is not limited by the allegations contained in
16 the body of the complaint when--as here--a complaint is accompanied
17 by attached documents; the court may consider such documents in
18 determining whether the plaintiff has stated a claim. See Durning
19 v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987).

20 Plaintiff has attached to his Complaint a copy of the transcript of
21 his December 22, 2011 hearing. (See Compl. Ex. J.) A review of this
22 document discloses that the Board did not deny Plaintiff's petition
23 for parole solely based on his mental health disability. (See id.
24 at 160-169.) Rather, the Board reached its conclusion based upon an
25 individualized inquiry regarding Plaintiff's suitability for
26 parole, which considered, in addition to his mental health,
27 Plaintiff's record of misconduct while incarcerated, his failure to
28 take responsibility for such conduct, and his failure to take

1 advantage of self-help programming opportunities within CDCR. (See
2 id. at 160-62, 164.) Moreover, the Board's consideration of
3 Plaintiff's mental health was focused squarely on his propensity
4 for violence should he be released. (Id. at 164.) In sum, the
5 hearing record renders Plaintiff's ADA claim under Thompson
6 implausible.

7 Finally, the court considers Defendants' contention that the
8 Complaint should be dismissed under Rule 8(a)(2) because Plaintiff
9 has failed to allege facts indicating with any particularity the
10 role played by each Defendant in violating his constitutional or
11 statutory rights. (See Mot. at 15.) The court agrees.

12 As Defendants note, the only allegation in the Complaint
13 arguably connecting the alleged misconduct to the individual
14 Defendants is Plaintiff's assertion that Defendants Valenzuela,
15 Cate, Guirbino, and Governor Brown are "legally responsible for the
16 operation of California Mens Colony-East." (Compl. at 11.)
17 Defendant Harris appears nowhere in the Complaint. The Complaint
18 includes no explanation of how any of the Defendants violated
19 Plaintiff's rights under the Constitution or the ADA, whether
20 through their conduct, enacted policies, or by any other means.
21 See, e.g., Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).
22 Arguably implicit in the Complaint is the contention that
23 Defendants have used their authority to put in place an unspoken
24 policy of categorically excluding inmates with mental health
25 disabilities from parole. However, as discussed immediately above,
26 Plaintiff has not plausibly alleged that any such policy exists.
27 Plaintiff's failure to allege any connection between Defendants and
28

1 any alleged harm he has suffered is a separate basis for dismissal
2 of the Complaint.

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4 **III. Conclusion**

5 For the reasons set forth above, Defendants' Motion to Dismiss
6 is GRANTED.

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8 IT IS SO ORDERED.

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10 Dated: February 26, 2014

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DEAN D. PREGERSON

United States District Judge